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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jones Day Reavis & Pogue North Point 901 Lakeside Avenue Cleveland, OH 44114				
EXAMINER				
PIAZZA CORCORAN, GLADYS JOSEFINA				
ART UNIT		PAPER NUMBER		
1733				

DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/720,525

Applicant(s)

DIETRICH ET AL.

Examiner

Gladys J Piazza Corcoran

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 62-96 is/are pending in the application.
- 4a) Of the above claim(s) 62-81, 86-96 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 82-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4/4/01. 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group IV, claims 82-85 in Paper No. 13 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 62-81, 86-96 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Groups I, II, III, IV, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 13.

Drawings

3. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81. No new matter may be introduced in the required drawing. It is noted that Applicant's priority documents contain drawings, however translated drawings must be provided by Applicant.

Specification

4. The disclosure is objected to because of the following informalities:
 - a. The Specification does not contain any Headings. See guideline below.
 - b. The Specification contains references to claims which have been canceled and no longer exist. For example, the references on page 1, paragraph 1, page 6, lines 11, 16, 29, page 8, line 16 and throughout the Specification.

c. Page 16, line 31 of the Specification recites that Figure 4 shows the front view of the forming station FS. Although Applicant has not submitted Drawings for this particular Application, the Drawings in the priority documents do not show the front view of the forming station in Figure 4.

Appropriate correction is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if

the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 83 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 83, which was not an originally presented claim, recites "the side walls are bent in a first mold and said collar is positioned on said side wall in a second mold." There is no disclosure in the Specification for bending the side walls of a cutout blank in a first mold and then bonding a collar to the side walls in a second mold.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 82-85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
9. Claim 82 recites the limitation "the side wall" in lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to either --said side walls-- or --said peripheral side wall--.

10. Claim 83 recites the limitation "the side wall" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to either --said side walls-- or --said peripheral side wall--.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 82 and 85 are rejected under 35 U.S.C. 102(b) as being anticipated by Chazal et al (US Patent No. 4,533,065).

Chazal discloses a method for assembling a food package tray (column 1, lines 1-27) by forming a cutout blank having a bottom and side walls (blank 11, column 3, lines 35-45, column 4, lines 1-3), bending the side walls relative to the bottom to form a peripheral side wall (column 4, lines 4-19), positioning an annular collar on the side wall (blank 10, column 3, lines 65-68, column 4, lines 4-19), and bonding the collar to the side wall to provide the tray with an outwardly extending peripheral flange (rim, column 4, lines 30-42, column 12, lines 19-21). As to claim 85, the bonding is with a hot melt adhesive (thermoformed plastic adheres the layers together).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

15. Claim 83 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chazal et al (US Patent No. 4,533,065) as set forth above in claim 82, and further in view of Gics (US Patent No. 5,679,109) and/or Albano et al. (US Patent No. 4,007,670).

Chazal appears to bend the side walls and position the collar on the side walls in the same mold. However it is well known in the art to separately pre-form each part of the container in first molds and then join the parts in a second mold. For example, Gics discloses a method of forming a food package where the food package tray and the outer sleeve or jacket are preformed prior to be joined in a second mold (means 150; column 3, line 64 to column 4, line 10). Albano discloses another example of forming containers for food and drink where an inner member is bonded to an outer member in a second mold after the members are preformed in first molds (column 3, line 59 to column 4, line 7; column 5, line 25 to column 6, line 13). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the method of

forming food trays as shown in Chazal by first performing the side walls of the cutout blank in a first mold and then positioning the collar on the side walls in a second mold as is well known in the art and exemplified by Gics and Albano, only the expected results would be attained.

16. Claim 84 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chazal et al (US Patent No. 4,533,065) as set forth above in claim 82, and further in view of Albano et al. (US Patent No. 4,007,670).


Chazal discloses using a thermoformed layer 2 to adhere the cutout blank to the annular collar in addition to providing the interior of the container with a synthetic material. It is well known in the art to bond blanks for forming food containers by providing glue between the parts in order to secure the parts together. For example, Albano discloses providing glue between parts for forming containers in order to secure the parts together. As to whether the glue is a cold adhesive, such adhesives are well known in the art and would have been well within the purview of one of ordinary skill in the art to select depending upon the materials used and the use of the end product. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the method of forming a food tray as shown in Chazal by providing a cold glue to bond the blank and the collar together in order to secure the parts together prior to thermoforming the interior layer as is well known in the art and further exemplified by Albano, only the expected results would be attained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gladys J Piazza Corcoran whose telephone number is (703) 305-1271. The examiner can normally be reached on M-F 8am-5:30pm (alternate Fridays off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (703) 308-3853. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


Gladys J Piazza Corcoran
Examiner
Art Unit 1733

GJPC